

When the waiver policy was issued (Rajski's memorandum, Contestant's Ex. 5) there was no discussion of the status of the international representatives of the UMWA (Tr. 265). But in any event such a person would be required to sign under category 4, that is, as "all other visitors" (Tr. 266; Contestant Ex. 5).

The hazard training checklist incorporated with the release form used at Deer Creek mine is identical to the form used at the other Emery mines (Tr. 268). Lauriski directed the mine managers to implement the program (Tr. 250, 251).

Emery's mines consist of three separate complexes geographically very close but with three different entrances. The mines are independent. They are known as the Deer Creek mine, the Des-Bee-Dove complex and the Cottonwood Wilberg complex. Deer Creek mine overlies the Wilberg mine (Tr. 252, 293). Each of the three mines has its own security system (Tr. 252). A security guard records the times when visitors enter the property. Further, they are responsible for a visitor signing the waiver (Tr. 253).

Tom Rabbitt was the only person known to Lauriski who refused to sign the waiver although for the preceding six or seven months it had been the practice for Rabbitt to come on Emery's property day or night without its knowledge (Tr. 253, 288-289).

Witness Lauriski identified an exhibit which consisted of a large number of waiver and release forms. The forms received in evidence were generated at the Deer Creek mine between March 21, 1986 and April 27, 1986 (Tr. 254, 290; Contestant Ex. 6). All of the forms had been signed by non-employee visitors to the mine.

Up until the events of April 15, 1986 Lauriski was not aware of any person asserting the right to enter an Emery mine under § 103(f) of the Mine Act (Tr. 255, 273, 287).

In cross examination Lauriski agreed that during a § 103(g) inspection in January 1985 four UMWA health and safety representatives accompanied the federal inspectors during an electrical inspection (Tr. 285).

When a representative of the UMWA, who is also an non-employee, enters the mine under a contract right Emery requires that waiver be signed (Tr. 268).

On April 15, 1986 Lauriski instructed White to abate the citation rather than take a closure order. He did not understand at that time whether the closure order would be a "no-area affected order" (Tr. 256, 257). In three subsequent similar events Emery accepted the closure order (Tr. 257). The refusal to abate came about because Lauriski was advised by his counsel that the closure order would not affect any area of the mine (Tr. 257, 279).